

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

JUSTIN HEATH SMITH,
a/k/a “Austin Wolf,”

Defendant.

**Affirmation in Support of
Application for Order of
Continuance**

24 Mag. 2422

State of New York)
County of New York : ss.:
Southern District of New York)

Getzel Berger, pursuant to Title 28, United States Code, Section 1746, hereby declares under penalty of perjury:

1. I am an Assistant United States Attorney in the Office of Edward Y. Kim, Acting United States Attorney for the Southern District of New York. I submit this affirmation in support of an application for an order of continuance of the time within which a preliminary hearing would have to be conducted or an indictment or information would have to be filed, pursuant to Rule 5.1(d) of the Federal Rules of Criminal Procedure and 18 U.S.C. § 3161(h)(7)(A).

2. The defendant was charged by complaint with violations of 18 U.S.C. § 2252A(a)(2)(A) and (a)(5)(B). He was arrested on June 28, 2024 and presented in this District before Magistrate Judge Tarnofsky on that same date, at which proceeding the defendant was represented by Michael Baldassare, Esq. and Thomas Andrykovitz, Esq. and ordered detained.

3. At the presentment on June 28, 2024, a preliminary hearing was scheduled for July 29, 2024, after defense counsel consented to extend the deadline within which to conduct a preliminary hearing. Under the Speedy Trial Act, the Government had until July 29, 2024 within which to file an indictment or information. *See* 18 U.S.C. § 3161(b).

4. On July 23, 2024, Magistrate Judge Valerie Figueredo entered an Order of Continuance, pursuant to Rule 5.1(d) and 18 U.S.C. § 3161(h)(7)(A), extending the time within which a preliminary hearing would have to be conducted or an indictment or information would have to be filed in this case until August 28, 2024.

5. On August 27, 2024, Magistrate Judge Stewart D. Aaron entered an Order of Continuance, pursuant to Rule 5.1(d) and 18 U.S.C. § 3161(h)(7)(A), extending the time within which a preliminary hearing would have to be conducted or an indictment or information would have to be filed in this case until September 27, 2024.

6. On September 24, 2024, the Honorable Katharine H. Parker entered an Order of Continuance, pursuant to 18 U.S.C. § 3161(h)(7)(A), extending the time within which a preliminary hearing would have to be conducted or an indictment or information would have to be filed in this case until October 28, 2024.

7. On October 24, 2024, the Honorable Gary Stein entered an Order of Continuance, pursuant to 18 U.S.C. § 3161(h)(7)(A), extending the time within which a preliminary hearing would have to be conducted or an indictment or information would have to be filed in this case until November 27, 2024.

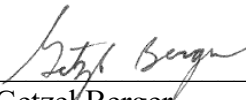
8. On November 26, 2024, the Honorable Barbara Moses entered an Order of Continuance, pursuant to 18 U.S.C. § 3161(h)(7)(A), extending the time within which a preliminary hearing would have to be conducted or an indictment or information would have to be filed in this case until December 27, 2024.

9. Defense counsel and I have had discussions regarding a possible disposition of this case. The parties plan to continue our discussions, but do not anticipate a resolution before December 27, 2024.

10. Therefore, the Government requests a 30-day continuance until January 27, 2025, to continue the foregoing discussions toward resolving this matter. On December 17, 2024, I personally corresponded with defense counsel, who stated that the defendant consents to an extension of the preliminary hearing and Speedy Trial Act deadlines to January 27, 2025, and has specifically consented to this request. This application has been authorized by Assistant United States Attorney Andrew Dember, Deputy Chief of the Criminal Division.

11. For the reasons stated above, good cause supports the extension of the preliminary hearing deadline, and the ends of justice served by the granting of the requested continuance outweigh the best interests of the public and defendant in a speedy trial.

Dated: New York, New York
December 23, 2024



Getzel Berger
Assistant United States Attorney
212-637-1061